this ancient rule governs. *Calvin's Case*, 7 Rep. 1. Whatever abstract rules there may be, the right of every sovereignty to determine for itself by its own laws who are its citizens is a fundamental one. By the Fourteenth Amendment of the United States Constitution "all persons born or naturalized within the United States are citizens;" the exception is that those not born "subject to jurisdiction thereof" are not citizens. Are the children of aliens within the exception? When within our territory, the sovereigns, diplomats, sailors upon ships of war, and soldiers in the organized military forces of a foreign State, are not subject to our jurisdiction. Children born of parents under these circumstances of extra-territoriality would not be citizens. The same is true of the children of tribal Indians. The logic of these exceptions of sovereignty, however, does not apply to the alien subject domiciled in the United States. He is subject to the territorial jurisdiction; his children are born subject to our jurisdiction; and these, by our municipal law, are citizens. Accordingly, the decision reached by the Supreme Court seems to have every sanction of authority, policy, and theory.

The case further presents a phase of the conflict of laws not often considered. The objection to the doctrine of the majority opinion has been taken by very high authorities, that as our law provides no right of election by or for a child, as do the continental codes, a dual allegiance will result, and this is urged to be contrary to the theory of citizenship. This difficulty, however, is apparent rather than real. When a child is born in America of Chinese parents, China claims him by the *jus sanguinis*, America by the *jus soli*. It is not a question whether he is an American or a Chinaman; he is both. The municipal laws being thus in conflict, his citizenship at any time will depend upon whether he is subject to the jurisdiction of the one or of the other country. The duality of citizenship is a fact only in a third country. In China he is a Chinaman; in America, an American.

ESTOPPEL IN CRIMINAL LAW. — Whether the doctrine of estoppel has any place in criminal law, and if so, what principles govern its application, are questions that have seldom, till of late years, come up for legal discussion. The doctrine has been applied in some jurisdictions in cases of embezzlement under statute, and the decisions have been founded principally on the grounds put forward in Bishop on Criminal Law, Vol. II. ch. 16, § 364. (See, for example, *State* v. *Spaulding*, 24 Kan. 1.) Relying on such eminent authority, a dissenting judge in a recent Nebraska case maintained that the defendant should be estopped to set up a defence to the crime imputed to him. *Moore* v. *State*, 74 N. W. Rep. 319 (Neb.). The defendant, who was auditor of public accounts in the State, was indicted for embezzling some of the State's funds. The statute under which he was indicted enacted that if any person charged with the collection, safe-keeping, or disbursement of the public money convert any part of it to his own use, he shall be deemed guilty of embezzlement. By the constitution of the State all fees which were theretofore payable to a public officer for his services were made payable in advance into the State treasury. The defendant, pretending that he was charged with the collection of fees for the State, had received such fees from insurance companies, and had not accounted for them. The majority of the court held

that the defendant was not charged with the receipt or safe-keeping of the fees, but was rather expressly forbidden by the constitution to receive them, and therefore was not within the description of the statute. Sullivan, J., dissenting, contended that as in a civil action by the State the defendant would be estopped to deny that the money belonged to the State, he would be estopped in like manner in a criminal action.

It is difficult to see how, in a civil action by the State to recover the money, there could be any application of the doctrine of estoppel. In collecting the fees the auditor was not the State's agent; he only assumed to act as such. At the time of the conversion, then, the money was not the property of the State, and the latter could lay claim to it only by ratifying the collection by the defendant. The civil action itself could be said to be such ratification, and the defendant could not then deny, or, to speak very loosely, would be estopped to deny, that the money belonged to the State. But this is a principle of ratification; there is no ground for estoppel in any true sense of the word. How can the defendant be said to have made a representation to the State which the State acted upon? And so in the present criminal action; there was no embezzlement of the State's funds, because at the time of the conversion the money was not the property of the State. It might become the property of the State by ratification, but the conversion could not be made a crime by the ratification. To resort to any doctrine of estoppel whose essential elements seem to be absent would overturn all sound principles of statutory construction, and introduce a fiction dangerous to the criminal law.

LIBEL PER SE. — What manner of publication will constitute an injury without more damage is always a difficult question for the court. The general rules are clear and unquestioned, but their application to the particular case must depend upon personal opinion and judicial policy. For this reason the decisions are often open to public criticism. A late instance is the case of *Gates* v. *N. Y. Recorder Co.* (New York Law Journal, March 10, 1898), in the present term of the New York Court of Appeals. The defendant company falsely published of the plaintiff, who had been lately married to a General Gates, "The General's bride is a dashing blonde, said to have been a concert-hall singer and dancer at Coney Island." In the argument great stress was laid upon the notoriously disreputable character of the concert halls at Coney Island. The court held the publication libellous *per se*. Mr. Justice O'Brien and the Chief Justice dissented.

The right to reputation is not simple, but highly complex and technical. The action based upon this right, developed in the ecclesiastical courts, took the form at common law of an action on the case, which requires an allegation of damage. Certain publications are, as the books say, a general damage by presumption of law; in modern ideas, this means that the imputations are *per se* an injury without damage. In slander, words which impute to the plaintiff the commission of a crime, a loathsome disease, or which disparage him in his office, trade, or profession, are by early judicial legislation actionable *per se*. The liability in libel is broader; vilification, or whatever reasonably brings a man into hatred, ridicule, or contempt, is libellous *per se*. For false publications not defamatory *per se* an action on the case always lies if damage is shown.